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Attorneys for Defendants Target Corporation,  
International Vitamin Corporation, and Perrigo  
Company of South Carolina, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

TODD GREENBERG, On Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

vs.

TARGET CORPORATION, a Minnesota  
Corporation, INTERNATIONAL  
VITAMIN CORPORATION, a New Jersey  
Corporation, and PERRIGO COMPANY  
OF SOUTH CAROLINA, INC., a South  
Carolina company,

Defendants.

Case No. 3:17-cv-01862-RS

**ANSWER OF INTERNATIONAL  
VITAMIN CORPORATION TO  
CORRECTED SECOND AMENDED  
COMPLAINT**

Complaint Filed: April 4, 2017  
Trial Date: None Set

CALL &  
JENSEN  
EST. 1981

1 Defendant International Vitamin Corporation (“Defendant”) hereby answers  
 2 Plaintiff Todd Greenberg’s Second Amended Complaint. The following numbered  
 3 paragraphs respond to the factual allegations in the corresponding numbered paragraphs  
 4 of the Second Amended Complaint. Defendant denies all the allegations in the Second  
 5 Amended Complaint except as expressly admitted herein.

6 **ANSWER TO ALLEGATIONS REGARDING NATURE OF ACTION**

7 1. In response to paragraph 1, Defendant admits that it manufactured and sold  
 8 at wholesale biotin supplements, which were then marketed and sold by Target under  
 9 the Up & Up brand (the “Biotin Products”). Defendant states that the labels on these  
 10 products speak for themselves. Defendant denies the allegations that it marketed the  
 11 Biotin Products or sold them to the public, and denies the allegation that it made  
 12 representations that are false, misleading, or likely to deceive the public.

13 2. In response to paragraph 2, Defendant admits that biotin is the active  
 14 ingredient of the Biotin Products. Defendant admits that the allegations regarding the  
 15 characteristics of biotin are accurate, but qualifies this admission to the extent these  
 16 allegations are overly simplistic or incomplete.

17 3. In response to paragraph 3, Defendant denies the allegations. The source  
 18 cited by Plaintiff in this paragraph speaks for itself. Defendant currently lacks sufficient  
 19 knowledge or information to form a belief as to whether the opinions stated in the  
 20 source cited by Plaintiff are valid.

21 4. In response to paragraph 4, Defendant denies the allegations.

22 5. In response to paragraph 5, Defendant denies the allegations.

23 6. In response to paragraph 6, Defendant denies the allegations.

24 7. In response to paragraph 7, Defendant admits that it cannot represent that  
 25 the Biotin Products treat or cure any diseases. Defendant denies that it made any such  
 26 representations, and denies the other allegations in this paragraph.

27 8. In response to paragraph 8, Defendant denies the allegations. The source  
 28 cited by Plaintiff in this paragraph speaks for itself. Defendant currently lacks sufficient

1 knowledge or information to form a belief as to whether the opinions stated in the  
2 source cited by Plaintiff are valid.

3 9. In response to paragraph 9, Defendant denies the allegations.

4 10. In response to paragraph 10, Defendant denies the allegations.

5 11. In response to paragraph 11, Defendant denies the allegations of false,  
6 misleading, and deceptive advertising. Defendant admits that Plaintiff purports to bring  
7 this action on behalf of himself and other consumers. Defendant denies that class  
8 treatment is appropriate.

9 **ANSWER TO ALLEGATIONS REGARDING JURISDICTION AND VENUE**

10 12. In response to paragraph 12, Defendant admits that this Court has original  
11 jurisdiction under 28 U.S.C. § 1332(d)(2). Defendant denies that Plaintiff or the putative  
12 class are entitled to relief. Defendant further denies that the Court has jurisdiction to the  
13 extent Plaintiff lacks standing to assert the claims.

14 13. In response to paragraph 13, Defendant admits this Court has personal  
15 jurisdiction over Defendant. Defendant denies that it sold the Biotin Products to the  
16 public in California.

17 14. In response to paragraph 14, Defendant denies the allegations.  
18 Nevertheless, Defendant does not intend to challenge venue in this court.

19 **ANSWER TO ALLEGATIONS REGARDING PARTIES**

20 15. In response to paragraph 15, Defendant is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations regarding  
22 Plaintiff's residence and purchase, and on that basis denies them. Defendant denies the  
23 remaining allegations.

24 16. In response to paragraph 16, Defendant is without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations.

26 17. In response to paragraph 17, Defendant denies the allegations.

27 18. In response to paragraph 18, Defendant denies the allegations.  
28

**ANSWER TO FACTUAL ALLEGATIONS**

19. In response to paragraph 19, Defendant admits that it manufactured some of the Biotin Products and sold them at wholesale to Target. Defendant admits that Target sold the Biotin Products at retail in its stores in multiple states, including California, in various quantities and for various prices. Defendant denies the remaining allegations.

20. In response to paragraph 20, Defendant denies the allegations. The labels on the Biotin Products speak for themselves.

21. In response to paragraph 21, Defendant denies the allegations. The labels on the Biotin Products speak for themselves.

22. In response to paragraph 22, Defendant denies the allegations.

**ANSWER TO ALLEGATIONS REGARDING CLASS DEFINITION AND  
ALLEGATIONS**

23. In response to paragraph 23, Defendant admits that Plaintiff purports to bring this action on behalf of himself and the class defined in the paragraph. Defendant denies that this action is appropriate for class treatment.

24. In response to paragraph 24, Defendant admits that Plaintiff purports to bring this action on behalf of himself and the class defined in the paragraph. Defendant denies that this action is appropriate for class treatment.

25. In response to paragraph 25, Defendant denies the allegations.

26. In response to paragraph 26, Defendant denies the allegations.

27. In response to paragraph 27, Defendant denies the allegations.

28. In response to paragraph 28, Defendant denies the allegations.

29. In response to paragraph 29, Defendant denies the allegations.

30. In response to paragraph 30, Defendant admits that Plaintiff seeks equitable relief. Defendant denies that Plaintiff or the classes are entitled to such relief.

31. In response to paragraph 31, Defendant denies the allegations.

32. In response to paragraph 32, Defendant denies the allegations that it has or is violating any laws, and denies the allegations that the members of the defined classes or the general public have or will continue to be deceived by Defendant's conduct.

#### **ANSWER TO ALLEGATIONS REGARDING COUNT I**

**(for alleged violation of Business & Professions Code § 17200 *et seq.*)**

33. In response to paragraph 33, Defendant repeats and incorporates its responses to the allegations contained in the foregoing paragraphs to the same extent Plaintiff repeats and re-alleges the allegations in the preceding paragraphs of the Second Amended Complaint.

34. In response to paragraph 34, Defendant admits that Plaintiff purports to bring the claim on behalf of himself and the defined classes. Defendant denies that this action is appropriate for class treatment.

35. In response to paragraph 35, Defendant denies these allegations.

36. In response to paragraph 36, Defendant denies these allegations.

37. In response to paragraph 37, Defendant states that the California statutes speak for themselves.

38. In response to paragraph 38, Defendant denies these allegations.

39. In response to paragraph 39, Defendant denies these allegations.

40. In response to paragraph 40, Defendant denies these allegations.

41. In response to paragraph 41, Defendant denies these allegations.

42. In response to paragraph 42, Defendant admits that Plaintiff seeks restitution, an injunction, and other equitable relief. Defendant denies that Plaintiff and/or the classes are entitled to such relief.

#### **ANSWER TO ALLEGATIONS REGARDING COUNT II**

**(for alleged violation of Consumers Legal**

**Remedies Act – Civil Code § 1750 *et seq.*)**

43. In response to paragraph 43, Defendant repeats and incorporates its responses to the allegations contained in the foregoing paragraphs to the same extent

1 Plaintiff repeats and re-alleges the allegations in the preceding paragraphs of the Second  
2 Amended Complaint.

3 44. In response to paragraph 44, Defendant admits that Plaintiff purports to  
4 bring the claim on behalf of himself and the defined class. Defendant denies that this  
5 action is appropriate for class treatment.

6 45. In response to paragraph 45, Defendant admits that the cause of action  
7 purports to be brought under the Consumers Legal Remedies Act. Defendant denies that  
8 Plaintiff and/or the class is entitled to any relief.

9 46. In response to paragraph 46, Defendant is without knowledge or  
10 information sufficient to form a belief as to the truth of the allegations.

11 47. In response to paragraph 47, Defendant denies these allegations.

12 48. In response to paragraph 48, Defendant admits that Plaintiff seeks an  
13 injunction, restitution, and disgorgement. Defendant denies that Plaintiff and/or the  
14 defined class are entitled to such relief.

15 49. In response to paragraph 49, Defendant denies these allegations.

16 50. In response to paragraph 50, Defendant denies that it received notice, and  
17 on that basis denies the allegations.

## 18 **DEFENSES**

19 Without admitting that it bears the burden of proof, Defendant alleges the  
20 following additional matters as defenses. Defendant reserves the right to assert any  
21 defense that constitutes a rebuttal of Plaintiff's prima facie case, regardless of whether  
22 such defense is asserted herein. Defendant further reserves the right to seek leave to  
23 amend this Answer should information or other evidence come to light which supports  
24 any affirmative defense not alleged herein.

25 1. Plaintiff's claims are barred in whole or in part on the grounds that the  
26 Second Amended Complaint fails to state a claim upon which relief can be  
27 granted.  
28

2. Plaintiff's claims are barred in whole or in part on the grounds that he did not sustain any injury as a result of the alleged conduct.
3. Plaintiff's claims are barred in whole or in part on the grounds that the statement in question was accompanied by an appropriate disclaimer.
4. Plaintiff's claims are barred in whole or in part on the grounds that the statements that are alleged to be false, misleading, and/or deceptive, are true.
5. Plaintiff's claims are barred in whole or in part on the grounds that Plaintiff lacks standing to pursue one or more of his claims.
6. Plaintiff's claims are barred in whole or in part on the grounds that Plaintiff failed to mitigate his damages.
7. Plaintiff's claim for punitive damages is barred on the grounds that Defendant had a reasonable and good faith basis for its conduct.
8. Plaintiff's claims are barred to the extent they seek remedies outside the applicable statute of limitations.
9. Plaintiff's claims are barred in whole or in part on the grounds that Defendant's conduct was protected by the First Amendment of the Constitution.
10. Plaintiff's claims are barred in whole or in part on the grounds that Defendant's conduct was neither "unlawful" nor "unfair" as those terms are used in California Business & Professions Code § 17200, et. seq.
11. Plaintiff's claims are barred in whole or in part on the grounds that Defendant's conduct comes within the safe harbor protections of California law.
12. Plaintiff's claims are barred in whole or in part on the grounds that Defendant did not make any warranties with respect to the products at issue.



13. To the extent Plaintiff seeks to obtain remedies on behalf of the putative class, the claims are barred in that granting such remedies would violate Defendant's rights to due process.
14. Plaintiff's claims are barred in whole or in part to the extent they are preempted.
15. Plaintiff's claims are barred in whole or in part to the extent the statements at issue in this case were not material to Plaintiff and putative class members.
16. Plaintiff's claims are barred in whole or in part to the extent Plaintiff and putative class members did not rely on the statements at issue in this case and/or Defendant's alleged conduct was not the proximate cause of Plaintiff or putative class members' alleged injuries.
17. Plaintiff's claims are barred in whole or in part by the voluntary payment doctrine to the extent Plaintiff and/or putative class members voluntarily paid for the products at issue in this case with full knowledge of the facts and circumstances pursuant to which such amounts were paid.
18. Plaintiff's claim for punitive damages is barred on the grounds that granting such relief would violate Defendant's right to due process.
19. Plaintiff's claim for equitable remedies is barred on the grounds that Plaintiff has an adequate remedy at law.

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### **PRAYER FOR RELIEF**

WHEREFORE, Defendant prays:



- 1           1. that Plaintiff’s request for this action to be administered as a class action
- 2           under Rule 23 of the Federal Rules of Civil Procedure be denied;
- 3           2. that Plaintiff take nothing by his complaint, and that judgment be entered
- 4           in favor of Defendant and against Plaintiff;
- 5           3. for costs of suit; and
- 6           4. for such other and further relief as may be just and proper.

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8       Dated: July 5, 2018

CALL & JENSEN  
A Professional Corporation  
Matthew R. Orr  
William P. Cole  
Samuel G. Brooks

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12           By: /s/ Samuel G. Brooks  
              Samuel G. Brooks

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14           Attorneys for Defendants Target Corporation,  
15           International Vitamin Corporation, and Perrigo  
              Company of South Carolina, Inc.

**DEMAND FOR JURY TRIAL**

Defendant asserts its right to a trial by jury on all issues raised in the Complaint and in this Answer.

Dated: July 5, 2018

CALL & JENSEN  
A Professional Corporation  
Matthew R. Orr  
William P. Cole  
Samuel G. Brooks

By: /s/ Samuel G. Brooks  
Samuel G. Brooks

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